IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 20TH DECEMBER 2006 / 29TH AGRAHAYANA 1928

Crl.MC.No. 3612 of 2006()

MC.8/2006 of CHIEF JUDICIAL MAGISTRATE COURT, PATHANAMTHITTA

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PETITIONER: ACCUSED:

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1. RAJAN JOSEPH, MOOZHURKARA VEEDU,
   THAZHATHUVADAKARA MURI,
   VELLAVOOR VILLAGE, MANIMALA.

2. SARASAMMA, OTTAPLACKAL VEEDU,
   THAZHATHUVADAKARA MURI,
   VELLAVOOR VILLAGE, MANIMALA.

BY ADV. SRI.T.M.ABDUL LATHEEF

RESPONDENTS: COMPLAINANT & STATE:

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1. TAHSILDAR, CHANGANACHERRY.

2. VILLAGE OFFICER, VELLAVOOR.

3. STATE OF KERALA, REPRESENTED BY
   THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
   ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.PUZHAKKARA MUHAMMED

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 20/12/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.NO.3612 OF 2006

Dated this the 20th day of December, 2006.

ORDER

The petitioners claim to be sureties for an accused. Under Section 446 Cr.P.C, an order has been passed against the petitioners by the learned Magistrate. The petitioners have a right of appeal under Section 449 Cr.P.C. The petitioners have not preferred any appeal. They have come before this Court with this Crl.M.C under Section 482 Cr.P.C. They pray that the proceedings to recover amount from them under Section 446 Cr.P.C may be quashed. When the matter came up for hearing on 07.11.2006, the Court had directed the petitioners to produce the order. The petitioners have now produced that order passed under Section 446 Cr.P.C. The endorsement thereon shows that the copy was received by the petitioners on 01.12.2006.

2. I am satisfied that this petition under Section 482 Cr.P.C is not maintainable. The petitioner must certainly challenge the order passed under Section 446 Cr.P.C under Section 449 Cr.P.C before the appellate/Sessions Court. This petition under Section 482 Cr.P.C is not maintainable in view of the specific remedy which is available to the petitioners under Section 449 Cr.P.C.

3. This Crl.M.C is, accordingly dismissed. I may however hasten to observe that the dismissal of this Crl.M.C will not in any way fetter the rights of the petitioners to challenge the order passed under Section 446 Cr.P.C in an appeal instituted under Section 449 Cr.P.C.

R.BASANT
JUDGE

rtr/